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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

HUGO RIBOT,

Defendant and Appellant.

A125683

**(Alameda County
Super. Ct. No. H46659)**

Hugo Ribot appeals from a judgment of conviction following his plea of no contest to aggravated sexual assault of a child under 14 years by means of rape and aggravated sexual assault of a child under 14 by means of sodomy. (Pen. Code, §§ 269, subd. (a)(1), (3).)¹ His attorney has filed a brief seeking our independent review of the record, pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (see *Anders v. California* (1967) 386 U.S. 738), in order to determine whether there is any arguable issue on appeal. We find no arguable issue and affirm.

I. FACTS AND PROCEDURAL HISTORY

An amended complaint charged Hugo Ribot (Ribot) in 13 counts. The first seven counts pertained to victim Jane Doe: counts 1-3 each alleged an aggravated sexual assault upon a child under 14 by means of rape (§ 269, subd. (a)(1)); count 4 charged the aggravated sexual assault of a child under 14 by a person more than 10 years older, by means of sexual penetration (§ 269, subd. (a)(5)); count 5 alleged rape and count 6

¹ All statutory references are to the Penal Code.

alleged forcible rape (§ 261, subd. (a)(2)); and in count 7, Ribot was charged with continuous sexual abuse of a child under 14 (§ 288.5, subd. (a)). Counts 8-13 pertained to victim John Doe: count 8 charged sodomy of a child under 14 by a person more than 10 years older (§ 286, subd. (c)(1)); counts 9-12 each alleged aggravated sexual assault of a child under 14 by a person more than 10 years older by means of sodomy by force or fear (§ 269, subd. (a)(3)); and count 13 charged forcible oral copulation with threat of retaliation (§ 288a, subd. (c)(3)). As to counts 1-7, it was alleged that each count would carry a full, separate and consecutive term of sentence, because the counts involved the same victim but on separate occasions. (See § 667.6, subd. (d).)

A. Alleged Facts

The following facts were set forth in the probation report, which was based on a letter to the probation department from the District Attorney's office.

1. Victim Jane Doe

On October 6, 2008, victim Jane Doe (Jane) informed school authorities that Ribot, her step-grandfather, was having sexual intercourse with her. After a brief interview with police, Jane placed a pretext call to Ribot, in which he said that what happened between them was not wrong because she had enjoyed it.

In further interviews, Jane informed the police that Ribot started molesting her when she was just six years old, touching her over her clothing, touching her breasts and vagina without clothing, and giving her money to spread her legs and display her vagina. These assaults occurred both in the home and in Ribot's van. When Jane was eight, Ribot penetrated her vagina with his finger. The assaults occurred two to four times per week, more than 100 times before Jane's 13th birthday.

After Jane turned 13, Ribot had vaginal intercourse with her 25 to 50 times, using force on at least five occasions. He surreptitiously set up a video camera in Jane's closet and filmed Jane undressing. One of the videos showed Ribot forcibly raping Jane. He also took photographs of Jane naked. He later told Jane about the videos and photographs and threatened to show them to others unless she had sex with him. He also

used other threats and rewards to keep her from telling anyone about what he was doing to her.

2. Corroboration by Sergio G.

Jane claimed to police that her former boyfriend, Sergio G., knew about Ribot's sexual assaults. When police interviewed Sergio G., he confirmed that he had personally witnessed Ribot sexually assault Jane while Sergio G. was hiding in her closet after Ribot came home one day. In addition, Sergio G. informed police that Ribot had asked him to get Jane drunk, so it would be easier to get her to submit to having sex.

3. Victim John Doe

Jane also informed the police that Ribot had molested other relatives. The police then conducted a records search, finding a 2006 report in which both Jane's cousin, John Doe (John), and his brother reported sexual assaults by Ribot.

The police interviewed John. He told them that, when he was 12 years old and watching a movie in Ribot's bedroom, Ribot stood him up and sodomized him for 20 minutes, and then warned John that Ribot would cut off his tongue if he told anyone. Ribot sodomized John approximately 14 times between the ages of 12 and 13. Ribot also forced John to get on his knees and orally copulate him.

In addition, John recounted, he witnessed Ribot sodomize John's younger brother and touch the breasts and vaginal areas of two young girls who were Jane's friends from church.

4. Capture and Search

San Leandro Police unsuccessfully searched for Ribot after Jane's report on October 6, 2008. On October 9, 2008, John informed the police that Ribot had telephoned John's friend, disclosing that Ribot's truck was disabled on highway 5 near Bakersfield. San Leandro Police contacted the California Highway Patrol, who went to the scene and arrested Ribot.

A subsequent search of Ribot's truck revealed it to be packed with Ribot's clothes, three passports, and other personal items, suggesting Ribot was attempting to flee. The truck also contained 28 nude photographs of Jane in pornographic poses, consistent with

her descriptions. In addition, there were six videotapes in the truck, showing Ribot setting up a video camera in Jane's closet and Jane undressing. One of the videos showed Ribot forcibly disrobing Jane and raping her as she cried, begged him not to, and repeatedly said "no" throughout the rape.

B. Plea Agreement and Entry of Plea

On April 8, 2009, Ribot entered into a plea agreement, by which he would plead no contest to the count one violation of section 269, subdivision (a)(1) (aggravated sexual assault upon Jane, a child under 14 years, by means of rape) and the count 12 violation of section 269, subdivision (a)(3) (aggravated sexual assault upon John, a child under 14, by means of sodomy), for an agreed-upon sentence of two concurrent terms of 15 years-to-life. The plea form – which was signed by Ribot, his attorney, and an interpreter – indicated that the court would also order Ribot to pay up to \$10,000 to the victim restitution fund and, if appropriate, actual restitution to the victim and other statutory fees and assessments.

In the plea form, Ribot acknowledged and waived his constitutional rights to have a jury trial, confront and cross-examine witnesses, remain silent, present a defense, and appeal. In addition, the plea form set forth the consequences of Ribot's plea, including potential immigration consequences and the requirement that he register as a sex offender. Ribot further agreed that he could be sentenced by a judge other than the one who took his plea.

At the plea hearing on April 8, 2009, Ribot was represented by counsel. The court confirmed the proposed plea and disposition, Ribot's obligation to pay restitution, the lifetime requirement to register as a sex offender, and other consequences of his plea. Ribot repeatedly indicated that he understood what the judge was saying. The court next reviewed the plea form with him, and Ribot confirmed that he signed the form, reviewed it carefully with the interpreter and with his attorney's assistance, and believed that he understood all of the information on the form. The court then expressly advised Ribot of his constitutional rights, including the right to a jury trial, his right to a preliminary hearing, his right to confront and cross-examine witnesses, his right to produce evidence,

his right to remain silent, and his right to appeal. The court asked Ribot if he gave up each of these rights, and in response to each inquiry Ribot responded “yes.” The court then queried: “THE COURT: Have you had a full opportunity to talk over the charges with your attorney? [¶] THE DEFENDANT: Yes. [¶] THE COURT: To discuss the possible defenses that might be raised in accordance with these proceedings? [¶] THE DEFENDANT: Yes. [¶] To go over the actual consequences and the possible sentences that you could receive in this case? [¶] THE DEFENDANT: Yes.” The court inquired whether there were “any advisements or anything else that anyone wants to put on the record before I make my findings and take his plea?” The court concluded: “All right. I find you understand your rights. You made a knowing and intelligent waiver of those rights[,] [y]our waiver of rights is voluntary, and that you understand the nature and consequences of your plea.”

Ribot then entered his plea of no contest to counts 1 and 12, and the parties stipulated there was a factual basis for the plea. The court made a finding of guilt as to counts 1 and 12 and noted that the other counts would be dismissed.

C. Request to Withdraw Plea and Sentencing

On May 22, 2009, over a month after Ribot had entered his no contest plea, the matter came on for sentencing. Defense counsel advised the court that, about a week after the plea hearing, Ribot had said he wanted to withdraw his plea, but the attorney had not understood why. Ribot then personally explained to the court as follows: “The day that I came to court the last time, they had given me medication for my prostrate [sic] and for my stomach and I had thrown up in the morning. I had low blood pressure, I was dizzy, and I didn’t understand what the man told me. . . . That is why I am asking you, sir, if you could please, if you could please look over my case. Because I am not in agreement with that. . . . I’m not in agreement because I don’t feel I’m guilty of that.” He added: “Mr. Rodriguez [his attorney] did not explain well.”

The court replied that nothing in the record supported Ribot’s claim: “. . . I have reviewed the transcript from the proceedings on April the 8th in front of Judge Picetti. And at that proceeding, Judge Picetti went over with you all of the aspects and

ramifications of your situation telling you, obviously, what you were charged with, what the proposed disposition was, what the consequences were going to be and further asked you if you understood everything that you were doing with the constitutional rights that you have in mind as well as the, as I said, the consequences that were proposed with respect to resolution of the case. [¶] And to each of the questions that Judge Picetti asked you with respect to your understanding of the situation, you answered in the affirmative that you understood exactly what was being proposed and your agreement with him at that time.”

Ribot replied: “I told you that I was dizzy, I had vomited, I had low blood pressure and I didn’t understand. It was the following day that I understood what he had told me. I called Senior Rodriguez. I wasn’t able to find him until the third day that I saw him in court.”

The court then decided to proceed with sentencing, permitting Ribot to file a formal motion if he desired: “All right. Sir, what I’m going to do is this: If you believe that there is some basis that you can establish that you didn’t understand what happened on the day that you took your plea, you may pursue that in the appropriate – with the appropriate motion. You may contact an attorney and explain to him what you believe may have happened on that day, April 8th. There’s nothing in the record before me today to support what you are saying. The record before me today, in fact, is to the contrary. That you did understand exactly what was going on on April 8th and that you were in agreement with him. So I’m going to sentence you today pursuant to the agreement. As I said, if you believe that there may be grounds for you to withdraw this plea, then you may pursue that at any time after this that you think is appropriate.”

The court imposed two concurrent terms of 15 years to life, a \$10,000 restitution fund fine, a fine of \$1,980 to the Victim Compensation Board, and other fees, all in accord with the plea agreement. Neither Ribot nor his attorney objected to the sentence.

Ribot filed a *pro se* notice of appeal on July 21, 2009. In his request for a certificate of probable cause, Ribot asserted: his attorney misled him into thinking he would receive a 12-year sentence rather than the 15-year-to-life sentence that was stated

in the plea form (which he signed) and by the court at the plea hearing (which he said he understood); Ribot's attorney did not file the appeal that Ribot was now filing; and Ribot was under the influence of medication and "not in the right state of mind to make an important decision" when he entered his no contest plea and told the court that he understood the consequences of his plea.

The trial court denied Ribot's request for a certificate of probable cause. Ribot, through his appellate attorney, filed a petition for a writ of mandate in this court, challenging the denial of the request for a certificate of probable cause. In proceeding A127193, we denied the petition.²

II. DISCUSSION

Ribot's appellate counsel represented in the opening brief in this appeal that he wrote to Ribot and advised him of the filing of a *Wende/Anders* brief and his opportunity to file his own supplemental brief within 30 days. We have not received any supplemental submission from Ribot.

We find no arguable issues on appeal. There are no legal issues that require further briefing.

² Ribot has also filed a petition for habeas corpus (A128568). By separate order filed this date, we deny the petition.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.